

REMARKS

A. Allowable Subject Matter

Applicants appreciate the Examiner's acknowledgment that the subject matter of claims 4, 6, 9, 10, 15, 17, 20, 21, 28, 30, 33 and 34 would be allowable if amended and placed into independent form. However, Applicants submit that these claims as well as their respective independent and intervening claims are allowable without such amendment for at least the following reasons.

B. The §103 Rejections

Claims 1-3, 5, 7, 8, 11-14, 16, 18, 19, 22-27, 29, 31, 32, 35 and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of U.S. Patent No. 4,670,899 to Brody et al ("Brody") in view of U.S. Patent No. 6,208,863 to Salonaho ("Salonaho"). The Applicants respectfully disagree and traverse these rejections for at least the following reasons.

In the Office Action the Examiner acknowledges that "Brody fails to specifically disclose [sic] the first layer and second layer, and adjusting said transmission characteristic threshold in response to the value of said first balancing metric relative to said second balancing metric." To make up for this deficiency in Brody the Examiner relies on Salonaho.

Each of the claims includes the features of: (a) calculating a first balancing metric based on an operating characteristic of said first layer; (b) calculating a

second balancing metric based on an operating characteristic of said second layer; and (c) adjusting said transmission characteristic threshold in response to the value of said first balancing metric relative to said second balancing metric.

In contrast, it is not altogether clear to the Applicants whether or not Salonaho discloses two balancing metrics or a single one. Assuming, for the purposes of the present argument only, that Salonaho does disclose two balancing metrics it nevertheless does not appear that Salonaho adjusts a transmission characteristic threshold based on a response to the value of a first balancing metric relative to a second balancing metric.

In more detail, Salonaho appears to calculate two values, a service time for mobile stations in a microcell and a pre-set threshold service time, R , for a macrocell. It does not appear to disclose the adjustment of a transmission characteristic threshold in response to the value of the microcell service times with respect to the macrocell threshold R (or vice-versa). Further, it appears that the value R is adjusted based on the load within the macrocell, not based on any comparison of balancing metrics.

Because the combination of Brody and Salonaho does not disclose or suggest the adjustment step, the Applicants respectfully submit that the subject matter of claims 1-3, 5, 7, 8, 11-14, 16, 18, 19, 22-27, 29, 31, 32, 35 and 36 would not have been obvious to one of ordinary skill in the art at the time the

present application was filed based on reading the disclosures of Brody and Salonaho.

Accordingly, the Applicants respectfully request withdrawal of the rejections and allowance of claims 1-3, 5, 7, 8, 11-14, 16, 18, 19, 22-27, 29, 31, 32, 35 and 36.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC.

By //John E. Curtin//
John E. Curtin, Reg. No. 37,602
P.O. Box 1995
Vienna, Virginia 22183
(703) 266-3330